Herbicide Use and Regulations in Ontario
March 22, 2017
Legislation

Pesticides Act* & Ontario Regulation 63/09*

- Ontario Ministry of the Environment and Climate Change (MOECC)

Pest Control Products Act and regulations

- Health Canada’s Pest Management Regulatory Agency (PMRA)

*Available on e-laws: www.ontario.ca/laws
Pesticides, when used appropriately and safely, can be used to control invasive terrestrial plants under an exception to the cosmetic pesticides ban, provided all requirements have been met.

**NOTE:** this presentation is for guidance only and is not to provide legal advice.
“Pesticides,”…

- A chemical or device that is used to prevent, destroy, repel, attract or reduce populations of pest organisms

  - Plant
  - Insect
  - Fungal
  - Rodent
  - Spiders, mites, ticks (arachnid)
  - Mites and ticks (subclass Acari)
  - Herbicide
  - Insecticides
  - Fungicides
  - Rodenticides
  - Arachnicide
  - Acaricides

- A pesticide must be both **federally registered** and **provincially classified**
Pesticide Classification

- Class 1: manufacturing concentrates
- **Class 2, 3 and 4**: agricultural, commercial and restricted
  - Class 5 and 6: domestic
  - Class 7: domestic with cosmetic and non-cosmetic uses.
- **Class 9**: active ingredients banned for cosmetic uses
  - Class 10: active ingredients for weeds poisonous to the touch
  - Class 11: active ingredients that are biopesticides and certain lower risk pesticides
  - Class 12: NNI treated corn and soybean seed
“... when used appropriately and safely...”

- Pesticides have both Benefits (i.e. control pests) and Risks (i.e. adverse effects)
- The Federal registration process includes approving a product label which lists the approved uses for that pesticide and requirements to mitigate potential risks
- Must follow all directions on the current label
Pesticides Must be: 
Applied according to the label

- Every federally registered pesticide has an approved label (may be updated from time to time)
- The label provides the approved uses and conditions of use for that specific pesticide, including pests, application method and rate, safety, etc.
- You are expected to read, understand and follow all requirements of the current label
- The Label is the Law
Where to find the current product label?

http://pr-rp.hc-sc.gc.ca/ls-re/index-eng.php
“… and safely, can be used…”

• A pesticide, as discussed, must be registered/classified and used in accordance with the current label
• The person using the pesticide also has requirements

• “5. (1) No person shall engage in, perform or offer to perform an extermination except under and in accordance with a licence of a prescribed class and except by the use of a pesticide of a class and under the conditions for use prescribed for that class of licence or unless exempt under the regulations.”
Exemptions to Licence Requirements for the use Pesticides in a Extermination

• The owner or a full time employee may use a class 5 or 6 or 7 pesticide on property they own or occupy (does not apply to a landlord in a rented apartment)

• Supervised assistant (with conditions)
  • Technician – holds technician certificate, indirectly supervised by licensed exterminator
  • Trainee – hand in hand supervision by exterminator
Licence types

• Unless exempt, no person shall sell, transfer, store or use a pesticide without the proper licence
  • Vendor Licence (to sell pesticides)
  • Exterminator Licence (to use pesticides)
  • Operator (for fee or payment)
Land Exterminator Licences

- Agriculture
- Landscape
- Industrial vegetation
- Aerial
- Forestry
Pesticide Notice / Warning Signs

NOTICE
PRODUCT USED
REGISTRATION NUMBER
CLASS 11 PESTICIDE
PEST
APPLICATION AREA
FOR INFORMATION CONTACT
CALL COLLECT/TOLL FREE
DATE APPLIED

February 24, 2009
Storage Requirements

- Unlikely to contaminate food and drink or impair health and safety
- Clean, orderly, precautions to prevent contamination
- Additional requirements are based on the Class of pesticides being stored.
Extermination Permits

Permits are required for higher risk products and special uses.

- Water (i.e., herbicides, mosquito larvicides, sea lamprey control)
- Aerial (i.e., Crown forests, certain agricultural applications)
- Land (i.e., right-of-ways, agriculture)
- Structural (i.e., structural fumigations)

- Permit approval may impose restrictions/conditions (e.g. timing, application rate, quantity, public notification, buffer zones, etc.)
Overview

Pesticides, when used appropriately and safely, can be used to control invasive terrestrial plants under an exception to the cosmetic pesticides ban, provided all requirements have been met.

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Ontario’s Cosmetic Pesticides Ban (CPB) has been in place since 2009.

The CPB prohibits the sale and use of products containing designated active ingredients on land unless under an exception.

Exceptions are provided for:
- Uses related to agriculture;
- Uses related to forestry;
- Uses related to the promotion of public health or safety; and
- Other prescribed uses, if prescribed conditions have been met.

“… under an exception to the cosmetic pesticides ban, provided all requirements have been met.”
Exceptions - Agriculture

Agricultural operation is defined in Regulation

Applies to use of a pesticide required for the agricultural operation

Requires Agricultural Class of land exterminator licence or

Grower’s Pesticide Safety Certificate for farmers to use pesticides on their operation
Exception - Forestry

Forest is defined as an area of trees 1 ha in size or greater.

Applies to activities related to harvest, renewal, maintenance, establishment of a forest; protection of forest resources; and accessing a forest.

Requires a Forestry Class of land exterminator licence.
Health and Safety exception to the cosmetic pesticides ban

- For the control of plants that are poisonous to humans by touch including:
  - Poison ivy
  - Poison sumac
  - Giant hogweed
  - Wild parsnip

Pesticides containing only Class 10 pesticide ingredients may be used
Exception – Other Acts

Allowed when required by other legislation
Exception – Natural Resources (Invasive Species)

Requires MNR or Conservation Authority approval
Terrestrial Invasive Plant Management
Using Class 9 Pesticides
Applying for a Letter of Opinion for the
Natural Resources Exception
March 22, 2017
Natural Resources Exception under Ontario Regulation 63/09

1) Overview of the natural resource management provisions in the cosmetic pesticides ban

2) Outline decision criteria
   - Does the project meet the intent of the Natural Resources Exception?
   - Who can undertake a project
Background

• Ontario’s cosmetic pesticides ban took effect April 22, 2009.
  • Objective was to reduce public exposure to pesticides, and applies to cosmetic use of pesticides including its use on lawns, gardens, school yards etc.

• Recognition that there was need to allow for the use of certain pesticides for certain types of activities.

• There are exceptions to the ban, including uses related to
  • Golf courses
  • Agriculture
  • Forestry
  • Promotion of public health or safety
    – poisonous plants, public works, buildings and structures
  • Other uses (e.g. arboriculture, specified sports fields, scientific purposes, other legislative requirements)
  • Natural resources
Natural Resources Exception under Ontario Regulation 63/09

- Resource management projects that propose to use **Class 9 pesticides** must comply with the requirements of the Natural Resources Exception under Ontario Regulation 63/09.
- The **purpose** of these projects must be to manage, protect, establish or restore natural resources – with the goal of protecting and enhancing Ontario’s biodiversity.
Natural Resources Exception under Ontario Regulation 63/09

The criteria for the Natural Resources exception:

- Project must
  - control an invasive species, or
  - benefit a species of plant or animal native to Ontario, or
  - protect or restore a rare ecosystem or its components

AND

- be in accordance with integrated pest management (“IPM”) principles.

AND

- No other exception under the Pesticides Act applies
Do any other exceptions apply to your project?

• If the project is covered by another provision in the *Pesticides Act* - the Natural Resources Exception does not apply.

• Examples

  - Dog strangling vine invading woodlot (>1ha), impacting forest harvest = **Forestry Exception**
  - Phragmites impacting visibility on highway right of way = **Public health or safety, public works exception**
  - Giant hogweed = **Public health or safety, poisonous plants exception**

Contact MOECC Regional Pesticide Specialist for information on these exceptions.
Who can undertake a project under the Natural Resources Exception?

- The Act states the Natural Resources Management project may be undertaken by:
  - MNRF or Conservation Authority (CA) staff or licensed exterminators hired by the CA or MNRF
  - Proponents who have an agreement with MNRF
  - Proponents who receive a written opinion from MNRF (Regional Director)
- Project must adhere to all other provisions of the Pesticides Act (E.g. Use of licensed exterminator)
Does the Natural Resources Exception apply?

Is the objective of the project to control or eradicate an invasive plant?

- MNRF staff confirm identification of the invasive plant and that management of this species is a provincial/local priority
- Use supporting documents (e.g. OIPC invasive plant lists) as a guide to confirm that control is not cosmetic (e.g. dandelion)
Does the Natural Resources Exception apply?

Is the objective of the project to:

- Benefit a species of plant or animal native to Ontario?
  - E.g. Control vegetation to protect a Species at Risk or the habitat of a Species at Risk

- Protect/restore rare ecosystem or its components?
  - E.g. control of vegetation to rehabilitate a tall grass prairie ecosystem
Does the Natural Resources Exception apply?

Does the project meet Integrated Pest Management (IPM) principles?

- IPM is the practice of preventing or suppressing damaging populations of pests by applying multiple comprehensive and coordinated control tactics.

• Project application should reference, peer reviewed best management practices (BMPs) for control such as those produced by the OIPC.
Requesting a letter of opinion on the natural resources exception

1) Ensure that no other exception(s) for use of a Class 9 pesticide apply.

2) Contact your local MNRF office for an application for Letter of Opinion for Natural Resources Management Projects Involving Class 9 pesticide use.

3) Submit application

4) MNRF reviews application
   - Natural Resource Management Project
   - Integrated Pest Management (IPM) Principles

5) MNRF may issue a written opinion stating that the project is a natural resources management project.

6) If written opinion is issued, your project can proceed as described.
   - The term of a written opinion can be up to 5 years.
Ensure compliance with all other provincial/federal regulations

Project proponents and licensed applicators are responsible for ensuring compliance with all other provincial and federal regulations including the *Endangered Species Act* (ESA)

- The ESA sets a world-class standard for SAR protection but also recognizes that some activities may occur even when SAR are present.
- Applicants for letter of opinion should contact their local MNRF office as early in process as possible to identify whether authorization is required under the ESA.
- Each project is considered on a case-by-case basis to determine whether an authorization is required.
For more information on invasive species and obtaining a letter of opinion

- Local MNRF District office
- Francine MacDonald, Senior Invasive Species Biologist, Natural Heritage Section, MNRF, 705-755-5136